*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+WRIT PETITION No.32981 of 1998

%Dated 12-09-2007

Baker Ali,

Petitioner

VERSUS

$ The Regional Manager, APSRTC,
Nizamabad Region, Nizamabad
& three others.

Respondents

! Counsel for Petitioner : Sri V. Narsimha Goud

^Counsel for the Respondents: Sri V. Padmanabha Rao for
Standing Counsel for APSRTC

<GIST:

> HEAD NOTE:

? Cases referred

1. (1995) 6 SCC 749
2. (1997) 7 SCC 463
3. (2005) 3 SCC 254
4. (2005) 7 SCC 338
5. (2006) 2 SCC 541

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.32981 of 1998

Date: 12.09.2007

Between:

Baker Ali

... Petitioner

AND

The Regional Manager, APSRTC,
Nizamabad Region, Nizamabad
& three others.

... Respondents

Counsel for the petitioner : Sri V. Narsimha Goud

Counsel for the respondents : Sri V. Padmanabha Rao for
Standing Counsel for APSRTC

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.32981 of 1998

ORDER:-

This writ petition is filed for a writ of mandamus to set aside the order of respondent No.1 to the extent he imposed the punishment of postponing the petitioner's annual increments for a period of two years having effect on future increments, while modifying the order passed by respondent No.3 and confirmed by respondent No.2. By the impugned proceedings, respondent No.1 also treated the interregnum period between the date of removal from service and the date of reinstatement as "not on duty" and denying the petitioner backwages for the said period.

The petitioner, who is a driver of the Andhra Pradesh State Road Transport Corporation (for short "the Corporation"), was entrusted with the duty of driving the bus bearing No.AP 9Z 1718 between the route Kamareddy and Karimnagar on 29.05.1992 (wrongly typed as 1995 in para 3 of the affidavit). While driving, a cyclist was hit by the vehicle resulting in his instantaneous death. This incident led to framing of two charges against the petitioner, which for convenience are extracted hereunder:

> "Charge-1: For having driving the vehicle No.AP 9Z 1718 on route Karimnagar on 29.05.1992 at an

unwarranted speed, near Thimmapur and dashed against a cyclist going in the same direction, as a result of which the cyclist died on the spot, which is a serious misconduct in terms of Clause IX (a) of Regulation 28 of APSRTC Employees (Conduct) Regulations 1963.

Charge-2: For having driving the vehicle with lack of anticipation near Timmapur on 29.05.1992 and caused the fatal accident which is a serious misconduct in terms of Clause IX (a) of Regulation 28 of APSRTC Employees (Conduct) Regulations 1963."

The enquiry officer after conducting enquiry submitted his report finding the petitioner guilty of both the charges. Accepting the said enquiry report, respondent No.3 issued proceedings dated 15.09.1992 whereby he removed the petitioner from service. This order was confirmed in appeal by respondent No.2 by his order dated 31.01.1993. On the review filed by the petitioner to respondent No.1, he modified the aforementioned two orders by his order dated 26.03.1996. As already noted above, the penalty of removal was modified and it is this order, to the extent it is adverse to the petitioner, which is assailed in this writ petition.

Heard Sri V. Narsimha Goud, learned counsel for the petitioner and Sri V. Padmanabha Rao, learned counsel representing the Standing Counsel for the Corporation.

Learned counsel for the petitioner submitted that the order of removal passed by respondent No.3 and as confirmed by respondent No.2 is based on no evidence. He further submitted that not only these two orders are based on no evidence, but they are contrary to the evidence on record. He further contended that respondent No.1, without examining the contentions raised on behalf of the petitioner on merits, mechanically disposed of the review petition by modifying the order with the conditions, which are totally detrimental to the interest of the petitioner.

Per contra, Sri Padmanabha Rao contended that since the findings rendered by the disciplinary and appellate authorities and as accepted by the reviewing authority fall in the realm of findings of fact, this Court, exercising the power of judicial review, would not re-appreciate the same and come to a different conclusion. He also submitted that the reviewing authority has not taken a sympathetic consideration due to the fact that the petitioner had been working for 15 years, modified the order of removal and therefore in the facts and circumstances of the case there are no grounds to interfere with the order passed by respondent No.1.

I have given thoughtful consideration to the rival submissions of the learned counsel.

As regards the interference with the matters pertaining to disciplinary proceedings, the law is well settled that the Courts would not re-appreciate or re-appraise the evidence since it is the primary tribunal, which has the jurisdiction to pass orders on the available evidence on record, even if on appreciation of the facts of the case, the Courts come to a conclusion different from the one, which is arrived at by the domestic tribunals and where such a view is a plausible view, the Courts would not substitute its view over the view taken by the domestic tribunals. If the Courts find that the findings are based on no evidence, the orders of penalty deserve to be interfered with. Even on the punishment, the Courts would not interfere with the quantum unless the punishment imposed is totally disproportionate to the gravity of misconduct, which shocks the judicial conscience (see **Om Kumar v. Union of India**[1], **Union of India and Another v. G.Ganayutham**[2], **Divisional Controller, K.S.R.T.C. (N.W.K.R.T.C.) v. A.T.Mane**[3], **V.Ramana v. APSRTC**[4] and **Ram Saran v. I.G.of**

Police, CRPF AND ANOTHER[5])

Keeping in view the aforementioned settled legal parameters, I shall examine whether the finding of guilt arrived at by respondents against the petitioner is based on no evidence.

In support of the charges against the petitioner, two witnesses were examined. They were Sri K. Laxman, Service Conductor and Sri T. Suryanarayana, Deputy Superintendent, Traffic, Kamarareddy Depot. The service conductor in his deposition stated as under:

> "On 29.05.1992, I was service conductor of 14.30 hrs. Kamareddy-Karimnagar, for which Sri Bakar Ali, E.95165 was service driver. While conducting the bus, I issued tickets to passengers boarded at Lingapur and asking again and again. Meanwhile the driver applied sudden brakes and stopped the bus. Immediately, I along with passengers got down and found the bus in the middle of road, one cyclist sustained injuries. After drinking water, the cyclist died on the spot. Immediately, I reported to Yellareddy Police Station. Some of the passengers also sustained injuries. I also obtained passengers statement on the service S.R. On the next day Sri T. Suryanarayana, Station Manager, Venkati Goud, Depot Secretary/Employees Union attended the accident spot and prepared the sketch of accident and taken measurements in my presence.
> I did not see how the accident took place, but it happened while the bus overtaking cyclist."

Sri T. Suryanarayana deposed as under:

> "On 29.05.1992, I, T. Suryanarayana, E.29199, Dy. Superintendent (T) received the accident message of AP 9Z 1718 at about 17.30 hours in Kamareddy Depot. Immediately, I along with Sri Zaleel Ahmed, National Mazdoor Union Delegate (Conductor) proceeded to Machareddy Police Station as we have received that the accident driver Sri Bakar Ali had reported at Machareddy

Police Station. They replied that they sent the driver to report to Gambhiraopet Police Station. The police advised us not to got to accident spot, Timmapur, proceeding to Sircilla in view of the risk involved in the night. On the next day, I along with Sri Venkat Goud, Depot Secretary, Employees Union attended the accident spot in the morning. The bus and dead body of cyclist was removed immediately after the accident by Police Officials on the same day. Hence, I have prepared the imaginary sketch of the accident as per the marks i.e., blood stain, skid marks, tyre marks etc., available at the spot together with measurements in the presence of Depot Secretary and Conductor. The bus was parked at Yellareddy Police Station along with dead body and cycle. The identity of the deceased was not known. I have also verified the sketch of accident spot of Police and tallied with it. I have obtained the spot explanation of Conductor Sri K. Laxman, E. 304403 and Driver Sri Bakar Ali had given his explanation after release of bail. The Conductor obtained passengers statement on the reverse of S.R.No.1879844. On 30.05.1992 Sri D.K. Reddy, Asst. Manager (T) and Sri P.Rajasekhar, Superintendent (T) also inspected the accident spot after my return from the spot. I have examined all the evidences together with circumstantial evidences and the following are my observations:

On 29.05.1992, the bus No.AP 9Z 1718 of Kamareddy Depot was given for 14.30 hours Kamareddy-Karimnagar via Sircilla for which Sri Bakar Ali, Service Driver and Sri K.Laxman was service conductor. While going the bus to Karimnagar at about 16.00 hrs after taking passengers at Samundra Lingapur before Thimmapur cross road the driver has observed one cyclist was going in the same direction towards Sircilla on the left side. As per passengers statement in the S.R. “it was drizzling and driver has sounded horn. The cyclist turned to right and came on the middle of road in the confusion. The driver also drove the vehicle on the right side to save him. The cycle came into contact with bumper of the bus (left part) and fell down and died on the spot.” The driver stated that the cyclist had not come

into contact with bumper. My observation was that unless the cyclist came into contact the accident would not have happened. I agree with passengers statement. The cycle was thrown away forward. The cyclist fell down before the bus. The driver applied brakes. The skidded distance of 15 ft. on the middle of road by left back wheels. Thereby the right wheels went to right margin. The distance between the dead body and the left side bumper is 1.9 ft. The distance between the left side of the bus to the left side edge of the road is 6'-8". It was straight road. The width of the road was 12 ft. and margin was 5 ft. on either side. Thereby the driver had failed to anticipate and drove the bus negligently to right side with an unwarranted speed, which resulted in the death of cyclist. The driver driven the bus carefully on his left side the accident would have been averted. Hence, I am of the opinion the driver was responsible for the cause of accident."

From the evidence of Sri Laxman, it is clear that as he was busy with collecting fares and issuing tickets, he did not notice how the accident occurred. Sri T. Suryanarayana, who is not an eye-witness and who visited the accident spot, a day after the accident referred to the passengers' statement, which ex facie revealed that as the cyclist, who was proceeding on the left side, turned to right and came on to the middle of the road, the driver tried to save him by turning the vehicle to the right side, but however, the cycle came into contact with the bumper of the bus (left part), the cyclist fell down and died on the spot. Very curiously the witness opines that the driver failed to anticipate and drove the bus negligently with an unwarranted speed resulting in the death of the cyclist.

From the narration of the occurrence as reflected in the evidence of Sri T.Suryanarayana, it is clear that when the cyclist, who was proceeding on left side, turned to right to such an extent

that he came to the middle of the road, the driver tried to avoid hitting him by turning to the right side. In spite of the same, he could not avert the accident. The said witness who did not witnessed the accident deposed on the basis of the spot statement of the passengers. From the manner in which the accident took place the opinion expressed by the witness is fundamentally erroneous and wholly without any basis. This evidence of the witness was made the sole basis for the enquiry officer to find the petitioner guilty of both the charges and for the disciplinary and appellate authorities to accept his findings.

Having carefully considered the evidence on record, I am of the view that the respondents failed to prove both the charges against the petitioner. The manner in which the accident had taken place does not even remotely suggest any negligence or culpability on the part of the petitioner and I have no doubt in the mind that in a situation in which the petitioner was placed any other driver with the best of the anticipations would not have averted the accident. The 1st respondent having interfered with the quantum of punishment imposed on the petitioner by respondent Nos.2 and 3, in my view, ought to have applied his mind to the facts of the case. The 1st respondent has not discussed the facts and displayed a rather mechanical approach in modifying the order of punishment. The 3rd respondent also failed to take note of the fact that the criminal Court acquitted the petitioner on 21.04.1994, albeit by giving benefit of doubt.

For the aforementioned reasons, the order of respondent No.1 is set aside. The matter is remitted to respondent No.1 to reconsider the review petition of the petitioner in the light of the findings given hereinabove.

In the result, the writ petition is allowed to the extent

indicated above. Respondent No.1 shall complete the exercise of reconsideration and pass orders within a period of one month from the date of receipt of this order.

As a sequel to disposal of the writ petition, WPMP.No.40516 of 1998 filed by the petitioner for interim relief is disposed of as infructuous.

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C.V.NAGARJUNA REDDY, J

Date: 12.09.2007
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[1] (1995) 6 SCC 749
[2] (1997) 7 SCC 463
[3] (2005) 3 SCC 254
[4] (2005)7 SCC 338
[5] (2006) 2 SCC 541